

Dale M. Cendali
Johanna Schmitt
Brendan T. Kehoe
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
dale.cendali@kirkland.com
johanna.schmitt@kirkland.com
brendan.kehoe@kirkland.com

Robert J. Schoenberg
RIKER DANZIG SCHERER HYLAND & PERRETTI LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981
Telephone: (973) 538-0800
rschoenberg@riker.com

Attorneys for Plaintiffs and Counterclaim Defendants
Tetris Holding, LLC and The Tetris Company, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TETRIS HOLDING, LLC and THE TETRIS
COMPANY, LLC,

Plaintiffs and Counterclaim
Defendants,

- against -

XIO INTERACTIVE INC.,

Defendant and Counterclaim
Plaintiff.

Case No. 3:09-cv-6115 (FLW) (DEA)

Hon. Freda L. Wolfson, U.S.D.J.
Hon. Douglas E. Arpert, U.S.M.J.

**NOTICE OF PLAINTIFFS'
RULE 37(A) MOTION TO COMPEL
AND FOR COSTS**

Document Filed Electronically

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 16, 2011, at 10:00 a.m. or as soon thereafter as counsel may be heard, the undersigned, attorneys for plaintiffs and counterclaim-defendants Tetris Holding, LLC and The Tetris Company, LLC (collectively "TTC") shall

move before the Honorable Douglas E. Arpert, United States Magistrate Judge, at the Clarkson S. Fisher Federal Bldg. and Courthouse, 402 E. State Street, Trenton, New Jersey 08608, for an Order, pursuant to Fed. R. Civ. P. 37(a): (i) compelling disclosure of all documents and other evidence (including deposition testimony) that reflects Defendant Xio Interactive, Inc.'s ("Xio") communications with attorneys before the commencement of this lawsuit regarding the issue of whether *Mino* infringes *Tetris*, including communications about what parts of *Tetris* constitute protectable expression, or (ii) in the alternative, precluding Xio from relying on any of such evidence in support of its "innocent infringer" defense or for any other purpose in this lawsuit. In addition, TTC seeks reasonable attorneys' fees and costs it has incurred in connection with making this motion;

PLEASE TAKE FURTHER NOTICE that, in support of this motion, TTC shall rely upon the accompanying Memorandum of Law and the supporting Declaration of Johanna Schmitt, Esq. submitted herewith. A proposed form of Order accompanies this motion.

Date: April 21, 2011

Respectfully submitted,

s/ Robert J. Schoenberg
Robert J. Schoenberg
RIKER DANZIG SCHERER HYLAND
& PERRETTI LLP
One Speedwell Avenue
Morristown, New Jersey 07962-1981
Telephone: (973) 538-0800
rschoenberg@riker.com

s/ Dale M. Cendali
Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Tel: 212-446-4800
dale.cendali@kirkland.com

Attorneys for Plaintiffs and Counterclaim Defendants
Tetris Holding, LLC and The Tetris Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing Notice of Motion to Compel and For Costs, Plaintiffs' Memorandum of Law, Declaration of Johanna Schmitt, Esq., and proposed form of Order were electronically filed with the Court and automatically served upon counsel of record using the CM/ECF system.

s/ Robert J. Schoenberg

Dated: April 21, 2011.